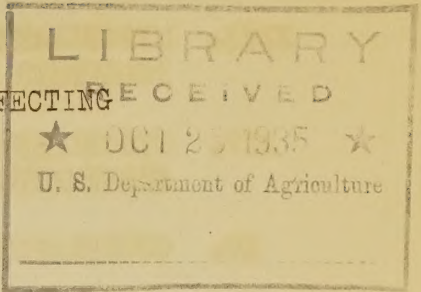


1.94
217 ana

ANALYSIS OF PROVISIONS OF THE
AGRICULTURAL ADJUSTMENT ACT AS AMENDED
BY THE 74TH CONGRESS, 1st SESSION, 1935, AFFECTING
PRIMARILY
MARKETING AGREEMENTS AND "ORDERS"
FOR
MILK AND ITS PRODUCTS



* This topical analysis has been prepared in the Dairy Section *
* merely as a working aid to Market Administrators and employees *
* of the Dairy Section. It is not to be construed as an official *
* legal opinion on any provision. Definite statements are made *
* on several points on which the law is controversial, and upon *
* which we are not, at the present time, certain as to what is *
* the best legal position to take. The purpose is to bring the *
* various provisions of the Act together under related subjects *
* commonly considered in connection with milk regulations. *
*
* There is in preparation by the Solicitor an analysis of the *
* Act which will embody the legal construction of the Act. *

INDEX

<u>SECTION</u>	<u>PAGE NO.</u>
I. PARITY PRICES	1
II. COMMODITIES FOR WHICH MARKETING AGREEMENTS ARE AUTHORIZED	1
III. PARTIES TO MARKETING AGREEMENTS	1
IV. COMMODITIES FOR WHICH "ORDERS" CAN BE ISSUED	2
V. PERSONS SUBJECT TO "ORDERS"	2
VI. INTERSTATE AND FOREIGN COMMERCE	3
VII. HEARINGS: MARKETING AGREEMENTS, "ORDERS" AND AMENDMENTS TO "ORDERS"	3
VIII. WHEN "ORDERS" MAY BE ISSUED. (RELATION TO MARKETING AGREEMENTS)	4
IX. PROCEDURE AND DEVELOPING OF MARKETING AGREEMENTS AND "ORDERS"	5
X. PROVISIONS WHICH CAN BE INCLUDED IN MARKETING AGREEMENTS AND "ORDERS"	6
XI. ASSESSMENT COST OF ADMINISTRATION	11

<u>SECTION</u>	<u>PAGE NO.</u>
XII. PROVISIONS BARRED BY AMENDED ACT	11
XIII. MISCELLANEOUS PROVISIONS AFFECTING "ORDERS" - INCLUDING LIMITATIONS	11
XIV. MISCELLANEOUS PROVISIONS AFFECTING MARKETING AGREEMENTS AND "ORDERS"	14
XV. COOPERATION WITH STATES	15
XVI. STATUS OF COOPERATIVE PRODUCERS ASSOCIATIONS UNDER THE AMENDMENTS	16
XVII. AMENDMENTS	17
XVIII. TERMINATION	17
XIX. COURTS AUTHORIZED TO ENFORCE MARKETING AGREEMENTS AND "ORDERS"	18
XX. REMEDIES APPLYING ONLY TO VIOLATION OF "ORDERS"	18
XXI. THE CONTINUATION OF AGREEMENTS AND LICENSES	20
XXII. BANG'S DISEASE AND SURPLUS REMOVAL	21
XXIII. PROVISIONS OF ACT WHICH MAY BE USED TO SUPPLEMENT MARKETING AGREEMENTS AND "ORDERS"	22

I. Parity Prices.

The base period for the calculation of parity prices is the five-year period, August 1909-July 1914, as in the original¹/Act, except that, if statistics of the Department of Agriculture are not available to show prices in such period, the base period may be (1) the post-war period, August 1919-July 1929, or (2) all that part of such post-war period for which such statistics are available (Sec. 8e). Specific authority is given to consider "current interest payments on farm indebtedness secured by real estate and tax payments per acre on farm real estate" as compared with such payments during the base period, in calculating parity prices (Sec. 2 (1)).

No action can be taken, through marketing agreements or "orders", which "has for its purpose the maintenance of prices to farmers above the level" of parity as defined by the Act. (Sec. 2 (2) (b)).

The consumer limitation on parity prices, as set out in Section 2 (3) of the original Act, is repealed and a "gradual correction of the current level of prices" (as the Secretary deems in the public interest is substituted therefor as a protection for the consumer. (Sec. 2 (2) (a) (1)).

II. Commodities for Which Marketing Agreements are Authorized.

Marketing agreements, not supported by "orders", are authorized for "any agricultural commodity or product thereof", but only as to such handling of the commodity or product as is "in the current of interstate or foreign commerce" or as "directly burdens, obstructs, or affects such commerce". (Sec. 8b) However, it is believed that this provision for marketing agreements for "any agricultural commodity or product thereof" cannot be used effectively unless close to a 100% sign-up of the industry is secured, because the non-signers cannot be required to comply with the agreement.

III. Parties to Marketing Agreements.

The Act, as amended, gives to the Secretary power to enter into marketing agreements with any one or all of the following classes of persons: "Processors, producers, associations of producers, and

¹/ "Original" Act refers to the Act as it was prior to the passage of the amendment by the 74th Congress.

others engaged in the handling of any agricultural commodity or product thereof..." (Sec. 8b). There might be an additional limitation arising out of the restriction that marketing agreements are to regulate certain phases of "handling" in that persons not performing functions regulated by the agreement might not be considered logical parties to such an agreement.

IV. Commodities for Which "Orders" can be Issued.

"Orders" are authorized only for the following commodities and their products. (Sec. 8c (2)).

1. Milk and its products.

2. Other commodities (The Dairy Section has no jurisdiction over the following commodities).

(a) Tobacco

(b) Fresh and dried fruits, except apples and except all canning fruits other than olives.

(c) Vegetables, but not including vegetables, other than asparagus, for canning (see special section containing provisions applying to potatoes.)

(d) Pecans and walnuts.

(e) Naval stores as included in the Naval Stores Act and standards established thereunder (including refined or partially refined oleo resin).

(f) Soy beans.

V. Persons Subject to "Orders". 1/

"Processors, associations of producers, and others engaged in the handling of any agricultural commodity or product thereof", specified in subdivision V of this analysis, may be made subject to "orders", but only as to that portion of the handling of such commodity or product as is in the current of, or directly burdens, obstructs, or affects, interstate or foreign commerce. Sec. 8c (1)).

A producer "in his capacity as a producer" is not subject to control by "orders"; neither is a retailer "in his capacity as a retailer" (excepting a retailer of milk and its products). (Sec. 8c (13)). If, however, a producer engaged in "handling" outside of the sphere of production, such producer would be subject to "orders" as to such handling. For further reference see section No. 13 of this analysis.

1/ "Orders" are authorized to be issued by the Secretary to require all handlers to do what is lawfully authorized and practically necessary to effectuate the policy of the Act insofar as it is contained in a marketing agreement or an agreement upon which a hearing has been held, in order to make the terms thereof applicable to those not signing the agreement.

The exception with respect to a retailer of milk does not mean that the Secretary is authorized to regulate retail operations such as fixing of retail prices. It merely assures us that a retailer cannot claim exemption from the application of a milk "Order" because a retailer was -- for purposes other than milk regulations -- exempted from the operation of an "Order" in his capacity as a retailer.

VI. Interstate and Foreign Commerce.

Due to a recent decision of the Supreme Court of the United States, which the Federal Courts of original jurisdiction in the various districts will follow, and in view of the limiting language of the amended Act, greater attention than heretofore given should be devoted by the commodity specialist to develop information before and at the public hearing to show that the handling of a substantial portion of the commodity to be covered by the program is actually in the current of interstate or foreign commerce or directly burdens, obstructs, or affects such commerce. It will be advisable to work closely with the counsel assigned to the agreement to ascertain whether the facts developed show, in the light of court decisions, whether the "handling" sought to be controlled by "orders" does directly burden, etc., the interstate or foreign commerce in the commodity, when all of the commodity does not actually move "in the current of" such commerce. Further details will be developed in instructions for the guidance of those holding hearings.

VII. Hearings: Marketing Agreements, "Orders" and Amendments to "Orders".

Public hearings are required on (1) all marketing agreements, whether supported by "Orders" or not; and (2) all "Orders" and Amendments thereto. The Act does not require a hearing on an amendment to an agreement. When an agreement is supplemented by an "Order", the Act requires, under section 8c, subsection (8), that the agreement is to regulate "the handling of such commodity or product in the same manner as such Order" and section 8c, subsection (10) makes a similar requirement with respect to an "Order" regulating the handling of the commodity in the same manner as a marketing agreement upon which a hearing has been held. Consequently, as a practical matter, if an "Order" is amended, in any material way, it would cease to regulate in the same manner as the accompanying marketing agreement, thus necessitating a change in the marketing agreement in order that the agreement could continue to meet the requirement of regulating in the same manner as the "Order". Hence it virtually amounts, with respect to milk agreements, to the requirement that a hearing must be held in connection with any substantial change of marketing agreement through amendment.

Further requirements have been made in general regulations, issued by the Secretary, viz.: (a) the proposed agreement or proposed "Order" must be reduced to writing for the purpose of a hearing,

(b) hearings on a proposed "Order" may be held simultaneously with hearings on a proposed marketing agreement.

VIII. When Orders May be Issued. (Relation to Marketing Agreements).

1. A hearing must have been held on both a proposed marketing agreement and a proposed "Order" prior to issuance of either.

2. If a proposed agreement is signed by the handlers of not less than 50 percent (80 percent for California type citrus fruits) of the volume of milk covered by the "Order", which is marketed within the marketing area defined in the "Order", the Secretary may issue an "Order" whenever he determines, in addition to the findings required in Sec. 8c (4), that the "Order" has been approved by at least $\frac{2}{3}$ of the producers by number, who have produced milk for sale in the marketing area, specified in such marketing agreement; or by producers producing at least $\frac{2}{3}$ of the volume of milk sold within the marketing area specified in the agreement or "Order".

3. If adequate handler sign-up, as noted in 2 above, has not been secured, then the Secretary may issue an "Order" regulating the handling of milk in the same manner as the agreement. In this case the Secretary must determine, in addition to the findings required in Sec. 8c (4), with the approval of the President, that:

- (a) Such failure to sign tends to prevent the effectuation of the declared policy of the title with respect to milk.
- (b) That the issuance of such an "Order" is the only practical means of advancing the interests of producers of milk, and
- (c) That producer approval, as outlined in Sec. 8c (9) (B) has been secured.

Findings required by the Act: (Application of Sec. 8c (4)).

A. Base period: The finding must support whatever base period is selected for a particular market.

B. Parity price: The Secretary must find what the parity price has been, and that the price is now below parity.

C. Interstate nature: The handling regulated must be in the current of interstate commerce or such as directly burdens, obstructs, or affects interstate or foreign commerce.

D. Authorization: Must find that the commodity is one authorized to be regulated by an "Order".

E. The effectuation of the Declared Policy: Must find that the issuance of an "Order" will tend to raise prices towards parity, to increase purchasing power of producers, and will approach parity in line with current consumption demand.

F. Provisions: Must find that each and every major provision of the "Order" tends to effectuate the declared policy of the Act above stated, or that any trade practice prohibited also tends to accomplish the same purpose.

G. Marketing Agreement: Must find that the "Order" regulates in the same manner as a marketing agreement upon which a hearing has been held.

H. Hearings: Must find that due notice and opportunity for hearing has been given.

I. Scope of "Order": Must find that "Order" is not applicable to all production or marketing areas, and that area selected is the smallest practical to regulate or that the issuance of several "Orders" would impede the effectuation of the policy of the Act.

J. Production and Marketing Differential: Must find that due recognition is given to local peculiarities.

K. Signers: Must find that handlers of required volume have signed, or having failed to secure sign-up, that such refusal prevents the effectuation of the Act, and that issuance of an "Order" is only practical means of advancing producer interests.

L. Individual Pools: Must find that 3/4 of the producers by volume favor individual distributor pool as such appears in the "Order".

IX. Procedure and Developing of Marketing Agreements and "Orders".

The procedure in developing of marketing agreements and "Orders" and in conducting public hearings will not differ materially from the procedure used in the past where either agreements or licenses were issued. The fact that the powers of the Secretary are now more clearly outlined in the Act, place upon him a more definite responsibility of making sure that there are adequate facts to permit him to issue the regulations prescribed in the Act. Consequently, greater care

and effort must be put forth preliminary to the issuance of an agreement or "Order". Emphasis will be placed upon the preparation of factual material by the Section Chief prior to the hearing to be used in supporting the findings outlined above. It will be necessary that such facts be presented at the hearing. Also, in addition to functions heretofore mentioned, it will be necessary for the Secretary to determine when the required handler sign-up and producer approval have been given as provided in the Act.

X. Provisions which Can be Included in Marketing Agreements and "Orders".

(There are some special provisions applying to commodities other than milk which are not included in this analysis.)

1. Marketing Agreements. Except as indicated in (b) of Section XIII, subsection 2 of this analysis, there are no statutory limitations, other than relevancy to the purposes of the act, on the provisions which marketing agreements not supported by "Orders", may contain. However, since it is expected that milk agreements will be accompanied by "Orders", for all practical purposes the agreements will be limited to such provisions as are permitted to be included in "Orders".

2. "Order": The following terms and conditions may be included in an "Order" and no others.

A. Cost to handlers

(1) Classification: For purposes of establishing minimum prices to producers, milk may be classified in accordance "with the form in which, or the purpose for which, it is used". It is considered that this language will permit classification in the future on the same basis as it has been classified under licenses in the past. Sec 8c (5) (A).

(2) Fixing, or Providing a Method for Fixing Minimum Prices, for each Use Classification: (a) Such prices, however fixed, are to be uniform to all handlers. Sec 8c (5) (A).

(3) Time when Handlers shall Make Payments to Producers or Associations of Producers. Sec 8c (5) (A).

(4) Allowable Adjustments in Connection with Producer Prices. Sec 8c (5) (A).

(a) Volume, market and production differentials customarily applied by the handlers subject to such "Order".

- (b) The grade or quality of milk purchased.
- (c) Locations at which deliveries of such milk or any use classification thereof is made to such handler. (Definitions of what was meant by these various adjustments was included in both the House and Senate Reports on the Agricultural Adjustment Amendments. They should be construed as illustrative and not as limiting the meaning of these adjustments. These adjustments are not to be construed as affecting the cost of milk to each handler on the basis of the prices established for each classification and the uses which he makes of all milk purchased by him. They will have to be interpreted in the light of familiar marketing practices prevalent in the area under the "Order", although the Secretary will have to maintain some uniformity as between different "Orders".)

B. Payment to Producers:

- (1) Individual distributor pool. Or, as stated in the Act, "The payment to all producers and associations of producers delivering milk to the same handler of uniform prices for all milk delivered by them". Sec. 8c (5) (B).
 - (a) Such a plan must have the approval of 3/4 of the producers by number or volume. Sec. 8c (5) (B) (i).
 - (b) The 3/4 approval is not required in the case of "Orders" covering milk products only. This exception was made for the purpose of avoiding unnecessary and cumbersome procedure in connection with the evaporated milk agreement or other similar agreements or "Orders". During the last minute revisions of the Bill, however, the requirement that every "Order", even though it was signed by handlers of the required volume of milk, must be approved by 2/3 of the producers by number or volume, practically resotres the requirement which it was sought to avoid. Sec. 8c (5) (B) (i).

(2) Market-wide Pool. Or as the Act itself states, "the payment to all producers and associations of producers delivering milk to all handlers of uniform prices for all milk so delivered, irrespective of the uses made of such milk by the individual handler to whom it is delivered". Sec. 8c (5) (B) (ii).

(a) There is no special producer approval necessary for this method of payment other than the approval of 2/3 of the producers by volume or number, as outlined in Section VIII.

(3) Adjustments. The same adjustments are provided here as enumerated in No. 1 above, and are to be construed as meaning the same in both instances when used in the same "Order". There is, in addition, an adjustment provided for the purpose of making payments under a base-surplus plan, if such a plan is included in the "Order". Sec. 8c (5) (B).

C. Equalization Payments. In order to operate a market-wide pool in the same manner as it now operates under licenses, a special provision was inserted in the Act whereby a pool could operate with the aid of balancing payments through an equalization account. This was inserted in the Act to overcome the common objection by handlers that an equalization payment was an unjustifiable additional cost. Sec. 8c (5) (c).

D. New Producers. The "Order" may provide that in the case of all milk purchased by handlers from any producer who did not regularly sell milk during a period of 30 days next preceding the effective date of the "Order" for consumption in the area covered thereby, payments to such producer would be made at the lowest use classification specified in the "Order" for a period of two full calendar months following the first of the next succeeding calendar month after which deliveries were begun. This does not affect the cost price to the handler, but only the price which is paid to such new producer. In other words, the milk will be pooled. The Secretary has no discretion with respect to the length of time that a new producer is to be paid according to the lowest use classification. If the new producer clause is used at all, it must be used as provided in the Act. Sec. 8c (5) (D).

E. Services.

- (1) Technical services. The "Order" may provide for the rendering of market information to producers and for the verification of weights, sampling, and testing of milk purchased from producers, and for making appropriate deductions therefor from payments to producers. An exception is made in the case of producers for whom these services are being rendered by a cooperative marketing association qualified under paragraph F, which utilizes the Capper-Volstead Act as the legal standard. The exception presumably extends to both the performance of these services and the right of the Secretary to make deductions. Sec. 8c (5) (E).
- (2) Assurance of payments. The "Order" may provide for the assurance of and security for payment by handlers for milk purchased. It is considered that this wording makes possible any means of assurance that the Secretary may wish to establish for such purposes. It is to be noted that the exception as to cooperative associations does not apply to the performance of this service. Sec. 8c (5) (E).

F. The "Order" may prohibit unfair methods of competition and unfair trade practices in the handling of milk. This general power to prohibit unfair trade practices and methods of competition is similar in character to the Federal Trade Commission Act. In effect, it confers upon the Secretary the power to determine administratively what acts are to be considered as unfair to the extent that they can be prohibited by law. This places an important function, as well as an administrative burden, upon the Secretary in connection with which he would be responsible to make his investigations, his findings, and his "Orders" with respect to such practices, conform to established procedures. The courts reserve to themselves the power to finally determine what constitutes an unfair trade practice or method of competition. They will use the Secretary's findings but will not necessarily be bound by them. Sec. 8c (7) (A).

- G. Price Filing. The "Order" may require handlers to sell "only at prices filed by such handlers in the manner provided in such 'Order'". "Orders" covering milk and cream to be sold for consumption in fluid form -- in other words, fluid milk marketing agreements and "Orders" are excepted from this provision. It would be available, therefore, for "Orders" such as for the evaporated milk industry or other dairy products.
- H. Administration. The "Order" may provide "for the selection by the Secretary of Agriculture, or method for the selection, of any agency or agencies and defining their powers and duty, which shall include only the powers:
- "(1) To administer such "Order" in accordance with its terms and provisions;
 - "(2) To make rules and regulations to effectuate the terms and provisions of such Order.
 - "(3) To receive, investigate, and report to the Secretary of Agriculture complaints of violations of such order; and
 - "(4) To recommend to the Secretary of Agriculture amendments to such order..

(This will make possible the continuance in Orders of the administrative methods now used in licenses. An attempt was made in Congress to prohibit cooperative associations from being eligible for designation as the administrative agency. It was defeated in conference and does not appear in the final Act. However, the selection of an agent or agency remains in the discretion of the Secretary.)

- I. Incidental. The "Order" may contain other provisions "incidental to, and not inconsistent with, the terms and conditions specified in subsections (5), (6) and (7) and necessary to effectuate the other provisions of such order." Whatever provisions are placed in "Orders" under this paragraph will have to be shown to be directly related to other provisions specifically authorized and necessary to their effective administration. It should not be construed to confer upon the Secretary additional substantive powers other than those specifically enumerated. Sec. 8c (7) (D).

XI. Assessment Cost of Administration

While neither subsection 5 nor subsection 7 of Section 8c, which are supposed to include every provision which may be included in an "Order", includes any provision with respect to financing cost of administering "Orders", Section 10 (b) (2) requires that each "Order" issued by the Secretary shall require each handler subject thereto to pay to the administrative agency established by the Secretary, his pro rata share of the expenses as the Secretary finds necessary to be incurred for the maintenance and function of such authority or agency. It marks a distinct difference from the procedure heretofor followed under milk licenses in that it definitely places the cost of administration on handlers to be paid for by them rather than to be financed out of deductions from producers. The enforcement of this requirement as noted in a subsequent section of this analysis is not to be secured in the same manner as the enforcement of other conditions of the "Order". A special procedure is provided. Sec. 10 (b) (2).

XII. Provisions Barred by Amended Act.

There is no authority in the Amended Act whereby the Secretary could establish retail prices. Retail price-fixing, as it applied to commodities other than milk, created strong Congressional opposition and was finally defeated. While the Secretary has long since refrained from establishing retail prices as a matter of policy, the history of retail price-fixing in the present Bill is of some weight in connection with any consideration of minimum resale prices.

XIII. Miscellaneous Provisions Affecting Orders - Including Limitations.

1. Affirmative requirements: "Orders" issued by the Secretary shall:

- (a) Not be applicable to all production areas or marketing areas, or both, of any commodity or product thereof unless the Secretary finds that the issuance of several "Orders" applicable to the respective regional production area or regional marketing areas, or both as the case may be, of the commodity or product will not effectively carry out the declared policy of this title. (8c, (11) (A)).

- (b) Be limited to the smallest regional or marketing areas, or both, which the Secretary finds practical and in compliance with the policy of the Act. Orders regulating the handling of milk and its products are excepted from this provision. (8c (11) (B)).
- (c) Prescribe, when applicable to the same commodity, such different terms applying to different production and marketing areas as the Secretary finds necessary to give due recognition to the difference in production and marketing in such areas. (8c (11) (C)).

2. Limitations:

- (a) "No marketing agreement or 'Order' applicable to milk and its products in any marketing area shall prohibit or in any manner limit, in the case of the products of milk, the marketing in that area of any milk or product thereof produced in any production area in the United States". (Comment: The meaning of this paragraph is not altogether clear nor does its history and discussion in Congress or in reports of committees suffice to clarify its meaning with respect to specific situations. In general, we do not construe it to prohibit the use of any provision specifically provided for in the Act, although any such regulation may, to a certain extent, limit the marketing of milk in the area to which the "Order" is applicable). (Sec. 8c (5) (G)).
- (b) No "Order" issued under subsection 9 shall be applicable to any person who sells agricultural commodities or products thereof at retail in his capacity as such retailer, except to a retailer in his capacity as a retailer of milk. Attention has been drawn to this in a previous section of this analysis. While retailers of milk and its products are excepted and therefore this section will not affect the dairy program, it should be noted that this limitation applies only to "Orders" which are issued pursuant to Sec. 8c (9) of the act entitled "orders with or without Marketing Agreement". (See also Section VIII subsection 3 of this analysis). Above limitation found in Sec. 8c (13) (A).

- (c) No "Order" shall be applicable to any producer in his capacity as a producer. (Sec. 8c (13) (B)).
- (d) Privileges of Cooperatives. As noted before, no "Order" or agreement applicable to milk and its products shall be construed to prevent a qualified cooperative marketing association from blending the net proceeds of all of its sales in all markets in all use classifications, and making distribution thereof to those producers in accordance with the contract between the association and its producers. (Comment: Enforcement or administrative problems which arise out of a use of this privilege and which results in inequities in the market, will have to be handled administratively rather than through legal means. Its application to specific situations will have to be worked out as they arise.
- (e) "Order" must follow marketing agreement. No "Order" can be issued under the amended Act "unless it regulates the handling of the commodity or product covered by such 'Order' in the same manner as, and is made applicable only to persons in respect to classes of industrial or commercial activity, however specified, in a marketing agreement upon which a hearing has been held." (Sec. 8c (10)) Comment: The Solicitor has tentatively construed this requirement to mean that a marketing agreement is that upon which a hearing has been held and to which signatures have been attached, even though a majority of handlers have not so signed. Consequently, it would appear that a hearing on a proposed marketing agreement will not be considered as sufficient for the issuance of an "Order" under subsection 9, providing for "Orders" without agreements.
- (f) Regulation of Advertising. No "Order" shall be issued prohibiting, regulating, or restricting the advertising of any commodity or product covered thereby, nor shall any marketing agreement contain any provision prohibiting, regulating, or restricting the advertising of any commodity or product covered by such marketing agreement. (Sec. 8c (10)). Comment: While no

provisions in existing licenses pertain to advertising in any way, it is possible that under the power to prohibit unfair practices, fraudulent advertising might eventually be subjected to a prohibition. For the present at least, we would not think that the above stated requirement of the Act would protect fraudulent advertising should the Secretary seek to prohibit it.

XIV. Miscellaneous Provisions Affecting Marketing Agreements and "Orders".

1. Books and Records.

- (a) The Secretary is given specific authority to require all parties to a marketing agreement and all handlers subject to an "Order" to furnish appropriate information. For the purpose of verifying the correctness of any information submitted, or the procurement of such required information, the Secretary is authorized to examine such "books, papers, records, copies of income tax reports, accounts, correspondence, contracts, documents, or memoranda" as the Secretary deems relevant. (Sec. 8d (1)).
- (b) The Secretary may also request such information as he deems necessary to determine whether or not there has been any abuse of the privilege of exemptions from the anti-trust laws. His power to secure this information is the same as stated in (a) above. (Sec. 8d (1)).
- (c) Confidential information. Any information so secured by the Secretary is required to be kept confidential and any officer or employee who divulges such information is subject to a fine or imprisonment and removal from office.
- (d) Exceptions.
 - (1) General statements based upon reports which do not identify the information furnished by any person may be published.
 - (2) Names of persons violating any marketing agreement or order, together with the statement of the provisions of the marketing agreement or "Order" violated by such person may be published by direction of the Secretary.

- (3) Such confidential information as the Secretary deems relevant may be disclosed in suits to which the Secretary or any officer of the United States is a party, and in administrative hearings brought at the discretion of the Secretary. (Sec. 8d (2)).

2. Base period may be changed when price data not available.

For purposes of any marketing agreement or "Order", the base period may be changed either to (1) the post-war period, August 1919-July 1929, or (2) all that portion of such post-war period for which the purchasing power of the commodity can be satisfactorily determined from available statistics of the Department of Agriculture; provided that the Secretary finds and proclaims that the purchasing power of the commodity cannot be satisfactorily determined from available statistics in the Department of Agriculture during the base period, August 1909-July 1914. (Sec. 8e).

XV. Cooperation with States.

"The Secretary of Agriculture upon the request of the duly constituted authorities of any State is directed, in order to effectuate the declared policy of this title and in order to obtain uniformity in the formulation, administration, and enforcement of Federal and State programs relating to the regulation of the handling of agricultural commodities or products thereof, to confer with and hold joint hearings with the duly constituted authorities of any State, and is authorized to cooperate with such authorities; to accept and utilize, with the consent of the State, such State and local officers and employees as may be necessary; to avail himself of the records and facilities of such authorities; to issue orders (subject to the provisions of section 8c) complementary to orders or other regulations issued by such authorities; and to make available to such State authorities the records and facilities of the Department of Agriculture; Provided, That information furnished to the Secretary of Agriculture pursuant to section 8d (1) hereof shall be made available only to the extent that such information is relevant to transactions within the regulatory jurisdiction of such authorities, and then only upon a written agreement by such authorities that the information so furnished shall be kept confidential by them in a manner similar to that required of Federal officers and employees under the provisions of section 8d (2) hereof." (Sec. 10 (i)).

Comment: The purpose of this provision is self-evident. While it appears that cooperation to the extent of conferring with State authorities and holding of joint meetings is mandatory upon the Secretary at the request of such State authorities, it is believed that sufficient latitude remains for the Secretary to maintain the necessary independence under his responsibility of administering the Act. The latitude under this provision is wide and its application will have to be worked out in connection with specific situations.

XVI. Status of Cooperative Producers Associations Under the Amendments.

1. The Secretary may not render the services of giving marketing information to, or verifying weights, sampling, and testing of milk for, producers for whom such services are being rendered by a qualified cooperative marketing association. (Sec. 8c (5) (E)).

2. Nothing contained in "Order" can prevent an association from distributing its proceeds among members according to membership contracts. (Sec. 8c (5) (F)).

3. Cooperative Representation. Whenever the Secretary is required to determine the approval or disapproval of producers with respect to the issuance of any "Order" or any term or condition thereof, or the termination thereof, any bona fide cooperative association engaged in marketing of the commodity or product covered by the "Order", or in rendering services for or advancing the interests of the producers of such commodity to which the "Order" is applicable, may express approval or disapproval in behalf of all producers who are members of or stockholders in, or under contract with such an association. (8c (5) (12)).

This would apply to:

- (a) Approval of an "Order" by producers under section 8c (8) and (9).
- (b) Termination: Where producers of more than 50 per cent of the volume of commodity to which the "Order" is applicable and which is sold in the marketing area specified, have favored termination.
- (c) Approval of 3/4 of the producers by number or by volume necessary for the inclusion of an individual distributor pool plan of payment.

4. General Encouragement. The Secretary, in administration of the Act "shall accord such recognition and encouragement to producer-owned and producer-controlled cooperative associations as will be in harmony with the policy toward cooperative associations set forth in existing acts of Congress, and as will tend to permit efficient methods of marketing and distribution."

Comment: While this is not construed to provide a legislative basis for performing additional services and making deductions in addition to those specified in sections 8c (5) (E) it nevertheless is a special mandate to the Secretary to encourage the development of such associations. (Sec. 10 (b) (1)).

XVII. Amendments.

1. Marketing Agreements. Nothing is said in the Act with reference to Amendments to marketing agreements not accompanied by "Orders". Such an agreement could be appropriately amended in accordance with the procedure for amendment set forth in the agreement itself.

2. "Orders and Agreement with 'Orders'". Because of the requirement that an agreement must regulate in the same manner as an accompanying "Order", and that an "Order" must regulate in the same manner as the accompanying agreement, as above noted, no amendments to a marketing agreement supported by an "Order" or to an "Order" can be effectuated unless all the procedural steps are taken which are required for the agreement and "Order" which is to be amended. This of course requires a public hearing, or approval, etc. (Sec. 8c (17)).

3. Due notice. Although no time is stated as to what constitutes due notice of a public hearing on a marketing agreement and "Order", it is specifically provided that three days shall be deemed due notice in the case of a hearing on an amendment to an "Order". Sec. 8c (17)).

Comment: Regulations issued by the Secretary will set forth the procedure as to due notice.

XVIII. Termination.

Termination of marketing agreements and "Orders"

1. By the Secretary. The Secretary is required to terminate or suspend (presumably with or without notice at any time) the operation of any "Order" or any provision of such "Order" if the effectuation of the policy of the Act is obstructed thereby. (Sec. 8c (16) (A)).

2. By the Secretary when favored by producers. The Secretary must terminate any marketing agreement or "Order" at the end of the current marketing period" for the commodity whenever he finds that such termination is favored by a majority of the producers who, during a representative period determined by the Secretary, have been engaged in the production for a market of the commodity, or have been engaged, during such period, in the production of the commodity for sale in the area specified in the agreement or "Order", provided that such majority has, during such period, either produced for a market more than 50 percent of the volume of the commodity in the area or have, during such period, produced more than 50 percent of the volume of the commodity sold in the marketing area -- which is a long and involved way of saying that the Secretary must terminate the marketing agreement or "Order" when such termination is favored by a majority of producers, either by number or by volume.

However, such termination can be effective only if announced on or before such date as may be specified in the marketing agreement or "Order", which date must be prior to the end of the then current marketing period. (8c (16) (B)).

3. The termination or suspension of any "Order" or amendment thereto or provision thereof shall not be considered an "Order" within the meaning of this section. (8c (16) (C)).

Comment: That is to say that hearings, procedure, approval and findings incident to the issuance of an "Order" are not required in connection with its termination.

XIX. Courts Authorized to Enforce Marketing Agreements and "Orders".

1. The amended Act vests "the several District Courts of the United States with jurisdiction specifically to enforce, and to prevent and restrain any person from violating, the provisions of any order, regulation, or agreement issued pursuant to this Title Upon the request of the Secretary of Agriculture, it shall be the duty of the said district attorneys of the United States, in their respective districts, under the direction of the Attorney General, to institute proceedings to enforce the remedies provided for in, or pursuant to, this Title". (Sec. 8a (6)).

XX. Remedies Applying only to Violation of "Orders".

1. In addition to being subject to the civil remedies mentioned in subdivision XX, any handler violating an "Order" to which he is subject (other than an order to pay a pro rata share of expenses) is made liable to prosecution and a fine of not less than \$50.00 or more than \$500.00 for each violation;

and each day during which the violation continues is a separate offense. No penalty shall apply to a violation occurring between the date upon which a handler has filed a petition with the Secretary and the date upon which the notice of the Secretary's ruling thereon is given, providing that the court finds that such a petition was filed in good faith and not for delay. (Sec. 8c (14)).

2. Collection of handler assessments. Any authority or agency selected by the Secretary to administer an "Order" may maintain in its own name, or in the names of its members, a suit against any handler subject to an "Order" for the collection of such handler's prorata share of expenses. United States District Courts are vested with jurisdiction to enter such suits regardless of the amount of the controversy. (Sec. 10 (b) (2)).

3. Petition by handler for review. A method of procedure is prescribed whereby a handler may petition the Secretary to modify an "Order" or to exempt such handler from such "Order". The Secretary is required to give a handler an opportunity for hearing on such a petition, in accordance with the regulations made by the Secretary, with the approval of the President. During the pendency of such petition, if it is filed in good faith and not merely for delay, the handler will not be subject to the statutory penalty for a violation of an "Order" upon which such petition was based. The Secretary's ruling on such petition shall be final, if in accordance with law; however, the handler is given the right to have the district Federal Court, in the district of which he is a resident, review the ruling of the Secretary for the purpose of determining whether such ruling has been lawfully made, or to require the Secretary to take such steps as the law requires. (Sec. 8c 15 (A) (B)).

4. Whenever the Secretary, or such officer or employee of the Department of Agriculture as he may designate for the purpose, has reason to believe that any handler has violated, or is violating, the provisions of any "Order" or amendment thereto, the Secretary shall have power to institute an investigation and, after due notice to such handler, to conduct a hearing to determine the facts for the purpose of referring the matter to the Attorney General for appropriate action. (Sec. 8a (7)).

5. In administering the provisions of Part II of the Act, including those provisions covering marketing agreements and "Orders", certain provisions of the Federal Trade Commission Act are made applicable to the jurisdiction, powers and duties of the Secretary. These are briefly (a) that the various departments and bureaus of the Government, when directed by the

President, may furnish records, papers and information to the Secretary relating to any handler; (b) witnesses may be required to attend investigational hearings, subpoenas may be issued, the courts may be called upon to assist in case a subpoena issued by the Secretary has been disregarded, provision for punishment of disobedience of a subpoena issued by a court, provision for the issuance of writs of mandamus commanding persons or corporations to comply with certain provisions, securing information by deposition, provision for witnesses' fees, etc; and (c) provision for severe penalties for making false statements or entries in connection with reports. (Sec. 10 (h)).

6. The Secretary may report any violation of any agreement entered into under part II of the Act (which includes milk agreements) to the Attorney General of the United States who shall cause appropriate proceedings to enforce such agreements to be commenced and prosecuted in the proper courts of the United States without delay. (Sec. 10 (h)).

XXI. The Continuation of Agreements and Licenses.

Nothing contained in this Act shall (a) invalidate any marketing agreement or license in existence on the date of the enactment hereof, or any provision thereof, or any act done pursuant thereto, either before or after the enactment of this Act, or (b) impair any remedy provided for on the date of the enactment thereof for the enforcement of any such marketing agreement or license, or (c) invalidate any agreement entered into pursuant to section 8 (1) of the Agricultural Adjustment Act prior to the enactment of this Act, or subsequent to the enactment of this Act in connection with a program the initiation of which has been formerly approved by the Secretary of Agriculture under such section 8 (1) prior to the enactment of this Act, or any act done or agreed to be done or any payment made or agreed to be made in pursuance of any such agreement, either before or after the enactment of this Act, or any change in the terms and conditions of any such agreement, or any voluntary arrangements or further agreements which the Secretary finds necessary or desirable in order to complete or terminate such program pursuant to the declared policy of the Agricultural Adjustment Act....."

Comment: This permits agreements and licenses to remain in effect until such a time as they may be replaced by agreements and "Orders" entered into or issued pursuant to the amendments. According to the Solicitor's opinion, while agreements and licenses can continue in effect, licenses may not be modified by any amendment after the effective date of this Act, which was August 24, 1935. (Sec. 38 Public No. 320, page 53, Compilation).

XXII. Bang's Disease and Surplus Removal.

A. New Appropriation. There was authorized to be appropriated the sum of \$40,000,000, of which \$10,000,000 was appropriated to be available until June 30, 1936 for the following purposes:

- (a) To eliminate diseased dairy and beef cattle, including cattle suffering from tuberculosis or Bang's disease.
- (b) For scientific investigation and efforts to eradicate disease in cattle.
- (c) For the purchase of dairy and beef products for distribution and relief purposes through advancements to the F. S. R. C.
- (d) To be used for all necessary expenses in connection therewith, including the employment of persons and means in the District of Columbia and elsewhere.

B. Extension of Previous Appropriation.

- (1) The unexpended balance of the fund appropriated by public resolution No. 27 to carry out Section 6 of what is commonly known as the Jones-Connally Cattle Act was re-appropriated to remain available until June 30, 1936. The uses for which the re-appropriated balance may be used are the same as those outlined in A above.
- (2) The unexpended balance of the funds appropriated by public resolution No. 27 to carry out Section 2 of what is commonly known as the Jones-Connally Cattle Act are declared to remain available for the purposes for which they were originally appropriated until June 30, 1936. These uses are:
 - (a) To finance surplus reduction and production adjustments with respect to the dairy and beef cattle industry.
 - (b) To carry out any of the purposes described in subsections (a) and (b) of Section 12 of the Act, which are: (1) Administrative expenses incurred under the Act, (2) payments authorized to be made under rental or benefit payments, etc., (3) acceptance of any agricultural commodity pledged as security for any loan made by any Federal agency conditioned on a production adjustment agreement, refunds on taxes, etc.

- (c) To support and balance the markets for the dairy and beef industry.

All of the foregoing provisions were embodied in Section 37, Public No. 320, page 54, Revised Compilation.

XXIII. Provisions of Act Which may be Used to Supplement Marketing Agreements and "Orders".

The Act, as amended, provides for two methods which may be used to supplement marketing agreements and "Orders" for the purpose of assisting in effectuating their provisions. These two methods may be outlined briefly as follows:

1. Authority to Limit Imports Which Render or Tend to Render Ineffective a Program Under the Act. "Whenever the President has reason to believe that any one or more articles are being imported into the United States under such conditions and in sufficient quantities as to render or tend to render ineffective or materially interfere with any program or operation undertaken, or to reduce substantially the amount of any product processed in the United States from any commodity subject to and with respect to which an adjustment program is in operation . . . , he shall cause immediate investigation to be made by the United States Tariff Commission". The Tariff Commission is required to give precedence to such investigations to determine such facts.

If, on the basis of such investigation, the President finds the existence of such facts, he is required to impose such limitations on the total quantities of any article or articles which may be imported as he finds and declares, and as shown by such investigation, to be necessary so that the entry into the United States of such article or articles will not (1) "render or tend to render ineffective or materially interfere with any program or operation undertaken, or" (2) "will not reduce substantially the amount of any product processed in the United States from any commodity subject to and with respect to which an adjustment program is in operation" Under the above provisions, however, the President cannot limit imports from any country to less than 50% of the average annual volume of the imports of the article involved than was imported from such country during the period from July 1, 1928, to June 30, 1933, both dates inclusive.

Such proclamation of the President shall become effective within fifteen days after its promulgation, and may be suspended or modified by the President whenever he finds that changed circumstances require such action to be taken to carry out the purposes of this section of the Act. (Sec. 22 (a) (b) (d) and (e)).

2. Authority Given Secretary to Use 30% of Customs Receipts to Aid in Agricultural Adjustment. "There is hereby appropriated for each fiscal year beginning with the fiscal year ending June 30, 1936, an amount equal to thirty per centum of the gross receipts from duties collected under the Customs Laws during the period January 1 to December 31, both inclusive, preceding the beginning of each such fiscal year." The Secretary is authorized to use such sums so appropriated "only to (1) encourage the exportation of agricultural commodities and products thereof by the payment of benefits in connection with the exportation thereof or of indemnities for losses incurred in connection with such exportation or by payments to producers in connection with the production of that part of any agricultural commodity required for domestic consumption; (2) encourage the domestic consumption of such commodities or products by diverting them, by the payment of benefits or indemnities or by other means, from the normal channels of trade and commerce; and (3) finance adjustments in the quantity planted or produced for market of agricultural commodities". The Secretary is authorized to expend such sums (not, however, for benefits in connection with the exportation of unmanufactured cotton) at such times, in such manner, and in such amounts as he "finds will tend to increase the exportation of agricultural commodities and products thereof, and increase the domestic consumption of agricultural commodities and products thereof". Sec. 32 of Public No. 320, page 53 of Revised Compilation.

